

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Commercial Spectrum)	
Enhancement Act and Modernization of the)	WT Docket No. 05-211
Commission's Competitive Bidding Rules)	
and Procedures)	
)	

Comments of
United States Cellular Corporation

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Their Attorneys

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Summary

USCC supports the Commission's designated entity program and agrees with the Commission's goal of ensuring that the program's benefits flow to its intended recipients. The Commission is right to consider proposals to re-focus the designated entity program away from the national wireless carriers, while retaining options within this program to afford non-national carriers opportunities to help small businesses. If the Commission adopts new restrictions to the designated entity program, as it has tentatively concluded, the most reasonable way of doing so is to restrict the opportunities for material relationships between the nation's few large incumbent providers, i.e. incumbent wireless providers with greater than \$5 billion in average gross wireless revenues, and qualified designated entities, to employ a definition of "average gross wireless revenues" which excludes the revenues of investors and the revenues of non-wireless affiliates and to index this \$5 billion threshold amount so that it retains constant dollar value.

"Significant geographic overlap" for the purposes of defining whether an incumbent wireless provider is deemed to be "in-region" should be based on total MHz/Pops of cellular, PCS, SMR and AWS in the relevant overlap market, i.e. more than 30 MHz of combined attributable cellular, PCS, SMR and AWS spectrum holdings in the 10% overlap area.

The Commission should limit but not foreclose the opportunities for large entities with significant interests in communication services to have investment and operational relationships with qualified designated entities holding cellular, PCS, SMR and AWS licenses provided the

population of the aggregate licensed service areas does not exceed 10% of the national population.

Finally, USCC also supports prompt Commission action in these proceedings so that applicants in Auction #66 will be afforded adequate time to prepare and file updates or amendments to their applications, if necessary, in compliance with Section 1.2105 of the Commission's rules.

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United States Cellular Corporation ("USCC")¹, by its attorneys, submits its comments in response to the Commission's Further Notice of Proposed Rulemaking (FCC 06-8), released February 3, 2006 regarding Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures in WT Docket No. 05-211 ("Notice").

Introduction

USCC strongly supported the Commission's decision on reconsideration in WT Dkt 05-353 to adopt changes in the 1.7/2.1 GHz Advanced Wireless Services (AWS) band plan which enhanced spectrum options for rural providers, new entrants and regional providers.² That proceeding expanded the number of licenses on which rural providers, new entrants and regional providers realistically could bid in Auction #66. The Commission now has the

¹ USCC provides cellular and PCS service to over 5.2 million customers in 149 predominantly suburban and rural markets in 25 states. USCC's main regional concentration is in the Midwest, in the states of Illinois, Iowa, Wisconsin, and Missouri and it has recently added markets in Kansas and Nebraska. USCC also has other regional clusters, in upper New England, Oklahoma, the mid-Atlantic states, Tennessee and North Carolina, and in portions of Washington, Oregon, and Northern California.

² See the Commission's Order on Reconsideration regarding Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Released: August 15, 2005 (Para's. 14-18)

opportunity to carry forward the initiatives commenced in its AWS band plan decision to ensure that its procedures for awarding designated entity benefits continue to support small business entry, expansion of advanced services in rural areas and diversity and competition in the provision of the next generation of advanced wireless services.

We support the designated entity program and agree with the Commission's goal of ensuring that the program's benefits flow to its intended recipients.³ We also strongly agree with the Commission's intent to " ... strike a delicate balance between encouraging the participation of small businesses in the provision of spectrum based services, and ensuring that those small businesses who do participate in competitive bidding have sufficient capital and flexibility to structure their businesses to be able to compete at auction, fulfill their payment obligations, and ultimately provide service to the public."⁴

The Commission is right to consider proposals to re-focus the designated entity program away from the national wireless carriers, while retaining options within this program to afford non-national carriers opportunities to help small businesses. The Commission should strike a balance that will enable small businesses " ...to attract capital and draw on the experience of existing firms and managers as a way to increase their odds of success ... without exacerbating the ownership concentration problems associated with turning to large incumbent providers in their existing regions for support."⁵ We believe that continuing to allow smaller in-region incumbents like USCC and others to work with small businesses will benefit new and expanded small business development, encourage the deployment of advanced wireless services,

³ Notice, Para. 1.

⁴ Notice, Para. 7.

⁵ Council Tree Ex Parte Communication dated June 13, 2005, p. 15.

particularly in rural areas, and help sustain diversity and competition in the mobile wireless industry.

If the Commission adopts new restrictions to the designated entity program, as it has tentatively concluded, the most reasonable way of doing so is to use a revenue benchmark set at a threshold level which preserves options for small businesses to continue to work with non-national carriers.

USCC also strongly supports the prompt auction of the AWS-1 licenses commencing on June 29, 2006 as scheduled. We agree with Chairman Martin and Commissioners Copps and Adelstein that the public interest in having additional commercial spectrum for broadband services demands auctioning the AWS-1 licenses starting on June 29, 2006.⁶ The Commission should act as promptly as possible to avoid delays in this important auction schedule. If the Commission decides to apply new restrictions to this auction, however, it should provide adequate time before the commencement of Auction #66 for all bidders to amend their auction applications to address any new requirements adopted in these proceedings.

⁶ See AWS Service Rules, statement of Chairman Martin ("Adoption of this order will allow the Commission to move forward expeditiously to auction 90 MHz of wireless spectrum."); Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, FCC 06-8 (rel. Feb. 3, 2006) (Further Notice of Proposed Rulemaking), statement of Commissioner Copps ("The AWS auction will be one of our largest in years. We need not delay this auction - which holds great promise for bringing new wireless services to American consumers."), statement of Commissioner Adelstein ("commenters and indeed our own Commission staff are forced to work within an incredibly aggressive schedule to try to finalize this proceeding sufficiently in advance of the June 29, 2006, AWS auction date").

Discussion

1. The Commission's Congressional Mandate to disseminate licenses to small bidders, to avoid concentration of licenses, to promote diversity and competition and to encourage the deployment of AWS services in Rural Areas Supports A Balanced Approach to Updating the Designated Entity Program.

When the Commission has previously considered how best to structure its procedures for awarding designated entity benefits, it has relied heavily on statutory mandates to identify the goals which it should be pursuing to support small business opportunities, expansion of advanced services in rural areas, enhanced diversity and competition in the provision of the next generation of advanced wireless services and avoidance of excessive concentration of licenses. We believe that these goals continue to provide relevant guidelines for the Commission's deliberations in these proceedings.

The Commission summarized these statutory objectives in its Fifth Memorandum Opinion and Order released November 23, 1994 in PP Docket No 93-253:

"When the new broadband PCS auction rules were adopted in the *Fifth Report and Order*, the Commission declared its intent to meet fully the statutory objective set forth by Congress in Section 309(j) of the Communications Act. In particular, we observed that it was the mandate of Congress that the Commission should "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given an opportunity to participate in the provision of spectrum-based services." We also noted that Congress has directed us to "promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants." With these congressional directives in mind, we established the entrepreneurs' blocks and designated entity provisions contained in the *Fifth Report and Order*, which are now under reconsideration."⁷

⁷ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Memorandum Opinion and Order*(5th MO&O"), 10 FCC Rcd 403, Para. 2 (1994).

This proceeding to update the designated entity program is timely and needed to address the relatively recent concentration of vast spectrum resources in the hands of the nation's few large incumbent providers. As Auction 58 visibly demonstrated, national providers have been able to use their substantial resources to dominate the spectrum auction process. Regardless of how this situation came about, the result is that realistic opportunities for many small businesses to participate in the provision of spectrum-based services have diminished. The Commission's bid credit procedures have failed to help meet congressionally mandated goals supporting spectrum opportunities for small businesses, rural service, diversity and competition.

USCC supports the proposal to prevent the largest national carriers from dominating the designated entity program so the benefits of that program can be refocused on small businesses, rural communities and expanded competition as Congress intended. With this change, small businesses would no longer be automatically overmatched in spectrum auctions by national carriers with large war chests. By limiting access to bid credit benefits the Commission would also be taking effective steps to encourage expanded small business participation in spectrum auctions and would be helping to meet its other statutory goals which include avoiding excessive concentration of licenses, enhancing diversity, promoting competition and encouraging provision of advanced services in rural areas.

2. The Commission Should Preserve the Options of Small Businesses Which Qualify for Bid Credit Benefits to have Material Financial and Operational Relationships with Non-National Wireless Incumbents.

The Commission has previously recognized that giving small businesses the option to have material financial and operational relationships with in-region incumbents and others can assist "...those small businesses who do participate in spectrum auctions to have sufficient capital and flexibility to structure their businesses to be able to compete at auction, fulfill their

payment obligations, and ultimately provide service to the public."⁸ We support Council Tree's proposals to preserve the option for small businesses to have such material relationships with smaller in-region incumbents. Extending such options to small businesses reasonably addresses the Commission's statutory mandates by promoting new and expanded small business development, encouraging the deployment of advanced wireless services, particularly in rural areas, and sustaining diversity and competition in the mobile wireless industry. For example, options for small businesses to rely on help from non-national incumbents can have practical benefits by expanding opportunities for financing and investment. As a result of the problems in Auction #5, banks and equipment vendors have been reluctant to extend credit to new entrants. Having a relationship with an experienced incumbent enhances the likelihood that a new entrant will also be able to develop sound banking and vendor relationships.

Allowing small businesses to work with non-national carriers is also sound policy because of the benefits this class of carriers is providing to consumers. Mid-sized regional carriers like U.S. Cellular, along with many smaller carriers, have been at the forefront of bringing high quality wireless services to rural and underserved markets. Non-national carriers have also taken the lead in expanding operations into new markets. As the industry has consolidated, the distinctions between the national carriers and non-nationals are becoming sharper. As the record in the Roaming NPRM⁹ and other proceedings have demonstrated, the Commission needs to take steps to ensure that the non-nationals continue to play a significant and beneficial role in the market for wireless services. The availability of the designated entity

⁸ *id.*

⁹ See In re Re-examination of Roaming Obligations of Commercial Mobile Radio Service Providers, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Dockets 05-263; 00-193, FCC 05-160, released August 31, 2005.

program has been a win-win proposition for small businesses and consumers and much of that benefit has arisen from the role played by the non-national carriers.

Providing options to small businesses to work with non-national wireless incumbents is also sound public policy considering the risks and uncertainties surrounding the deployment of new services in the capital intensive wireless marketplace. With the Commission poised to adopt modifications to its Part 1 rules governing bid credit benefits and to apply these modified rules in Auction #66, the risks and uncertainties surrounding the deployment of advanced services on AWS spectrum provide an excellent case in point:

a. Uncertainty about technologies. For the AWS-1 spectrum band today, no infrastructure equipment or handsets are available. The FCC observed that the technologies for this band are unknown and likely to be innovative.¹⁰ Potential bidders, especially smaller bidders, are uncertain about when technologies will be ready for this band, the services they will support, their costs and their operating characteristics.

b. Uncertainties surrounding Federal Government and BRS Spectrum Relocation. Based on information currently available from NTIA, it now appears that the relocation of Federal government communications systems operating in the 1.7 GHz portion of the AWS paired spectrum will present coordination and possibly technical challenges for the deployment of the spectrum won in Auction #66. There are also a number of technical unknowns which could add

¹⁰ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, 18 FCC Rcd 25162, at para. 1 (2003), recon., 20 FCC Rcd 14058 (2005):

Our licensing plan will allow the marketplace rather than the Commission to ultimately determine what services are offered in this spectrum and what technologies are utilized to provide these services. The licensing framework that we adopt today for the bands will ensure that their spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services.

to the cost and technical complexity of launching AWS operations in areas where the relocation of BRS Channel 1 and 2 operations from the 2150-2162 MHz band to 2.5 GHz replacement spectrum is involved.

c. Uncertainty about Services. As with technologies, the FCC expects the services in this spectrum to be innovative and develop in the marketplace.¹¹ Smaller bidders' success in deploying AWS spectrum will depend heavily on positioning their service offerings vis-à-vis those of other winning bidders to deploy the types of services that others are likely to deploy. They will need to differentiate their offerings with respect to larger carriers, but they will also need to be confident that sufficient demand will develop nationally for AWS-enabled services to support the creation of those services and the development of associated mobile devices.

d. Uncertainty about inter-carrier arrangements. Roaming and other inter-carrier arrangements are important in the PCS/cellular spectrum bands and depend heavily on relationships with other carriers. Just as in past auctions for PCS spectrum, smaller bidders will approach Auction 66 with the expectation that their relationships for technological compatibility, roaming, advanced service platforms, etc. will be essential to successful deployment. The relationship of a small business bidder with a regional carrier may reduce uncertainties about securing viable roaming arrangements with national carriers.

e. Uncertainty about Timing. The need to relocate federal incumbents and the uncertainty overhanging the relocation of Broadband Radio Service incumbents also makes the timing of AWS deployment uncertain. This is compounded by the uncertain timing of technologies. These timing issues have financial and technical consequences which will add to the business risks encountered by small business bidders.

¹¹ See note 9 *supra*.

The foregoing examples of the challenges potentially confronting small businesses illustrate a number of areas where sound public policy would dictate that providing options for small businesses to work with non-national wireless incumbents will address these risks and uncertainties. Simply awarding bid credits to small businesses without giving them the option to seek help from small and mid-sized wireless incumbents would be a half-measure which fails to meet the important needs of small businesses to have access to the financial, technical and operational resources they may need to make them successful.

3. The Commission Should Adopt a Definition of "Significant Geographic Overlap" for Restricting the Award of Bid Credit Benefits Which Takes Account of the Amount of Spectrum Holdings in Addition to Geographic Overlap.

USCC supports adoption of a definition of "significant geographic overlap" which is in line with marketplace realities. The amount of relevant spectrum held by an in-region wireless incumbent in any one service area is a highly significant competitive metric. In this respect the traditional geographic overlap concepts which the Commission applied in the early days of PCS deployment, for example, in Section 20.6 (c) of the Commission's rules, are no longer an adequate metric for the emerging generation of mobile services which increasingly include voice, data, video and other broadband capabilities.

Rather than using solely the 10% geographic overlap threshold in Section 20.6(c), we propose a threshold based on the total MHz-Pops of attributable cellular, PCS, SMR and AWS spectrum held by the incumbent in the relevant overlap market. An in-region incumbent would be deemed to have a "significant geographic overlap," if it has more than 30 MHz of combined cellular, PCS, SMR and (for the future) AWS holdings in the 10% overlap area (defined in Section 20.6(c) of the Commission's rules).

While there may be other approaches which could be used to establish an eligibility metric which takes account of spectrum quantity as well as coverage, USCC supports the adoption of the foregoing standards because they are based on computational mechanisms and regulatory practice which are already known to many in the wireless industry and this may afford a reasonable chance that they can be implemented without delaying the commencement of Auction #66.

4. If the Commission Introduces the \$5 Billion Revenue Threshold, It Should Measure Gross Wireless Revenues Only and Index the Threshold Itself.

USCC supports adoption of a definition for "average gross wireless revenues" based on operating results for the most recent three year period preceding the application filing deadline for participation in any spectrum auction with which to determine whether any in-region wireless incumbent exceeds the \$5 billion eligibility threshold. Logically the standard of review of the size of a wireless incumbent should be its revenues from wireless operations. Lumping the revenues of investors in a wireless incumbent (or even the revenues of non-wireless affiliates) with incumbent wireless revenues does not clarify and could obscure the real focus of the Commission's objectives in this proceeding.

The Commission should also consider indexing the \$5 billion threshold amount so that over time this threshold will remain stable in terms of constant dollars. The Commission already makes periodic adjustments on the basis of changes in the Consumer Price Index ("CPI") for various administrative purposes. See, for example, Section 1.1115 and 1.80 (b)(5)(i) of the Commission's rules. Committing to a gross wireless revenues adjustment mechanism such as the CPI would help to insure against unintentional but potentially significant changes in the compliance requirements proposed to be adopted here.

5. The Commission Should Confirm That Designated Entity Applicants in Auction #66 Will be Permitted to Amend Their Applications to Establish Compliance with Any Rule Changes Adopted in This Proceeding.

In view of the rapid transition to possible changed rules contemplated by the Commission and the fact that these changes could be applicable in Auction #66, USCC requests that the Commission make clear that designated entity applicants will be afforded adequate time to prepare and file amendments including either to add or to delete any attributable interest holder before the auction commences. The Commission should also confirm that, provided any such amendment complies with the "major amendment " restriction in Section 1.2105 (b)(2) of the Commission's rules, the addition or deletion of any attributable interest holder will be permitted either before or during the auction and that any parties involved in such adjustments will not automatically be deemed to be in violation of the Commission's anti-collusion rules merely because an attributable interest holder being added may have held an attributable interest in another applicant for one or more of the same markets.

6. The Commission Should Also Consider Limitations on the Availability of Bid Credit Benefits Where Designated Entities Have Material Relationships With Large Entities with Significant Interests in Communications Services.

The Commission has requested comment on whether it should prohibit the award of bid credit benefits where a qualified designated entity applicant has a material relationship with a large entity with significant interests in communication services. While the Commission's original focus was on implementing proposed prohibitions relating to large in-region incumbent wireless service providers, we believe that the Commission's Notice also raises important questions about the merits of adopting restrictions applicable to "large entities with significant interests in communication services."

We believe that the different types of financial and operational relationships which qualified designated entities potentially might have with the nation's largest voice and data providers, content providers, media interests, equipment manufacturers and facilities based and non-facilities based communication services providers could have many of the same adverse consequences as occur where such relationships are with national incumbent wireless providers.

We are also concerned that the focus of the Commission's designated entity program should be to benefit spectrum based small business opportunities which are realistically within reach of qualified designated entity bidders. For example, the largest geographic service area sizes, including the most populous REAG service areas in Auction #66 are clearly beyond the reach of small business bidders. Smaller geographic service areas on the other hand reasonably could be expected to provide entry opportunities for smaller entities and new entrants.

Taking the foregoing into account, our recommended approach would be for the Commission to limit but not foreclose the opportunities for large entities with significant interests in communication services to have investment and operational relationships with qualified designated entities holding licenses subject to bid credits. This approach would permit these large entities¹² to have investment and operational relationships with qualified designated entities holding cellular, PCS, SMR and AWS licenses provided the population of the aggregate licensed service areas does not exceed 10% of the national population. By limiting their relationships with qualified designated entities, the Commission would be helping to ensure that small businesses can get help from larger entities without losing bid credits and that bid credit benefits cannot be misused by larger entities to diminish licensing opportunities for all small

¹² In the case of non-wireless providers, we believe a \$5 billion annual gross revenue threshold is appropriate to define "large." Smaller non-wireless providers would not be subject to any restrictions.

business applicants, to undercut the Commission's statutory goals to promote diversity or to limit competition in local and regional markets.

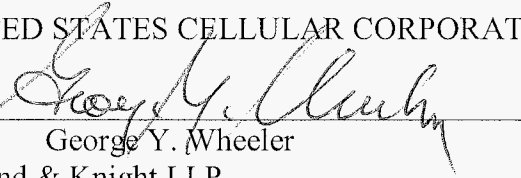
Conclusion

The Commission should consider updating its designated entity program to take into account the concentration of vast spectrum resources in the hands of the nation's largest wireless providers. If the Commission adopts new restrictions to the designated entity program, as it has tentatively concluded, the most reasonable way of doing so is to restrict the opportunities for material relationships between the nation's few large incumbent providers, i.e. incumbent wireless providers with greater than \$5 billion in average gross wireless revenues, and qualified designated entities. The Commission should continue to allow smaller wireless providers like USCC and others to help small businesses to attract capital and to obtain technical and operational assistance needed in implementing their new services. The Commission also should consider limiting but not foreclosing the opportunities for large entities with significant interests in communication services to have investment and operational relationships with qualified designated entities holding cellular, PCS, SMR and AWS licenses provided the population of the aggregate licensed service areas does not exceed 10% of the national population. We also strongly support prompt Commission action in these proceedings to avoid delaying the June 29, 2006 schedule for commencing the auction for the AWS-1 licenses.

Respectfully submitted,

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